

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

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| Accelerating Wireless Broadband |) | WT Docket No. 17-79 |
| Deployment by Removing Barriers to |) | |
| Infrastructure Investment |) | |
| Revising the Historic Preservation Review |) | WT Docket No. 15-180 |
| Process for Wireless Facility Deployments |) | |

Comments of

Santa Clara Pueblo, New Mexico

Santa Clara Pueblo respectfully submits the following comments on the Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry in the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (WT 17-79) and Revising the Historic Preservation Review Process for Wireless Facility Deployments (WT 15-180), with regard to the Federal Communications Commission's (FCC) interest in seeking input on ways to reduce regulatory impediments and to streamline the deployment of thousands of small antennae needed for 5G and other advanced wireless services. Santa Clara Pueblo understands the importance of, and supports, telecommunications development. We are concerned, however, that the Proposed Rule seems to imply, incorrectly, that reviews by Tribal Historic Preservation Offices (THPOs) are a constant source of delay and cost too much.

Santa Clara Pueblo is a federally recognized Indian tribe located in northern New Mexico, approximately 25 miles northwest of the City of Santa Fe. Our Pueblo's THPO was established in 2014. Since that time, we have successfully participated in the Tower Construction Notification System (TCNS). On average, we receive notice of approximately 30 to 50 tower sites each month through the TCNS for the 7 counties in New Mexico in which we have an interest. Although it takes substantial time to do even a minimal review of these notices, our THPO does not charge to review and comment on TCNS notices at this time. Thus far, we have absorbed those costs to the benefit of the telecommunications industry, even though we are providing special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to our Pueblo that could not be done by other "experts" who are not from our Pueblo because they simply do not know what we haven't told them due to our own internal practices.

Even though we do not charge for our review and comment on TCNS notices, Santa Clara Pueblo does support having a simplified flat-fee, cost-based model that would allow for recovery of our costs in providing our special expertise, especially when travel to a site is needed and our costs are highest, but also, should the Pueblo so decide, for any of our costs in providing expertise to the telecommunications industry. We have limited staff for our THPO work and we have limited financial means. The ability to recoup our modest costs would only improve timeliness. We must note, however, that for the vast majority of the tower sites we review through TCNS, no such travel is required, and so costs associated with documentary reviews would be significantly lower.

We believe the TCNS system is, for the most part, a highly effective way to streamline and simplify notification to our THPO and enables us to review and comment in a timely manner. Having the geographic coordinates of proposed tower sites allows us to locate placement of the structures and timely assess if cultural resources of concern are in the vicinity. It gives us a way to locate the sites quickly and determine which tower notices take priority. For instance, in most cases, tower sites within highly developed urban areas take lower priority because most often (although not always, which is why the advanced notice is so important) the chance of damaging or disturbing cultural resources is low.

Often, because of the TCNS location system, we can coordinate, when appropriate, with other nearby Pueblos so that one Pueblo's THPO can take the lead in providing mitigation

recommendations with the support of the other Pueblos' THPOs. This must be done on a case by case basis, however, and with the consent of the tribes involved. Nonetheless, we do try to coordinate whenever feasible, which results in more efficient processes for the telecommunications industry tower site applicants. Moreover, having the notice in multiple formats (i.e., both first-class mail and e-mails) helps ensure our THPO receives the notices and can provide comments, when necessary. For the vast majority of tower sites, we have been able to address our concerns in a timely manner through less formal dialogue with the telecommunications industry applicants.

As for the timing of reviews of tower sites, there may be ways to streamline processes while still allowing for some flexibility when serious cultural resources are at issue. Santa Clara Pueblo would be willing to support a presumption of there being no concern for a TCNS notice if a tribe does not respond within 60 days, so long as there is an obligation for a TCNS tower provider to provide all the information we designate up front and there is an obligation to contact tribes to ascertain concerns if a class III survey reveals sites or resources near or within an area of potential effect. Additionally, there must be an appeals process for when a tribe does not believe a provider has complied with these requirements. Santa Clara Pueblo stresses that there needs to be a recognition in the establishment by the FCC of parameters for a "reasonable timeframe" that exceptions to any one-size-fits-all rule may be warranted. For instance, there are differing times of the year when we have intense cultural activities at our Pueblo in which our THPO staff, who are members of our Pueblo, are less available. Also, when a death occurs at our Pueblo, there are rituals that must be observed and often meetings need to be postponed. A so-called "shot clock" is inappropriate for those sorts of circumstances.

Santa Clara Pueblo does not support any efforts for telecommunications industry applicants to "self-certify" that they have complied with Section 106 of the National Historic Preservation Act, 47 U.S.C. §470f (NHPA). In accordance with the federal government's trust responsibility and as provided in the NHPA, the FCC has an obligation to evaluate its undertakings for their impact on tribal historic properties and to consult with federally recognized Indian tribes in order to seek official tribal views on those undertakings. Involvement of the FCC's telecommunications industry applicants in the NHPA Section 106 process does not nullify or substitute for those obligations of the FCC. We do support the TCNS process, though, because, through early dialogue with the telecommunications industry applicants about slight modifications to a project, often a full-blown formal NHPA Section 106 process can be avoided.

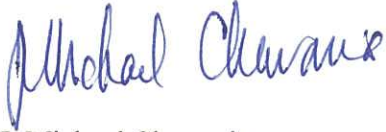
As for ways to streamline the TCNS process, which would, in turn, help streamline the construction of more advanced wireless service facilities, Santa Clara Pueblo may be willing to consider a process whereby we could provide a more detailed description of non-interest areas within the counties of interest we have designated. Frankly, the most effective way that the FCC can expedite review by tribes is to continue to ensure that initial contact with a THPO by a telecommunications industry applicant occurs as early in the planning process as is reasonably possible. Giving our THPO adequate information early enough for us to evaluate whether an historic property of cultural and religious significance may be affected by a proposed tower location is the key to expediting compliance with the NHPA in a cost-effective and efficient manner.

Santa Clara Pueblo does not support reconsidering when wireless facilities construction constitute a federal undertaking for purposes of NHPA Section 106. It is entirely appropriate that the FCC retain approval authority over facility construction because it is licensing the deployment of wireless infrastructure and that infrastructure transmits federal spectrum. The law is well-settled that licensing is a federal undertaking. That cannot be changed. Further, even though that infrastructure is changing, shifting toward small cell technology, the nationwide deployment of such technology is a massive endeavor, and the FCC should not abdicate responsibility for its impacts. Doing so will leave the issue of the scope of the FCC's responsibilities to courts, which will have the opposite intended effect of the Proposed Rule by delaying 5G deployment and increasing costs to all parties.

Likewise, we do not support expanding the categories of undertakings that are automatically excluded from Section 106 review to include pole replacements, deployments in rights-of-way, and collocations. The FCC stated that it is considering expanded exclusions based on the minimal potential to adversely affect historic properties, yet this minimal potential impact cannot be assumed. We do support consultations for guidelines that might facilitate the review process in areas such as those described. For starters, the small footprint of infrastructure does not necessarily equate to minimal potential to adversely impact historic properties when we are talking about tribal sacred sites. Nor does the fact that a site has already been harmed mean that adding additional wireless infrastructure will not have further, extremely severe consequences. In some instances this will compound the initial, ongoing harm of the first installation. Moreover, there are many instances in which tribes have not been consulted regarding the installation of infrastructure that exists today. Many rights of way—and in particular transportation rights of way—were created without tribal consultation. This is also true of Twilight Towers. The FCC must continue to consult with tribes regarding these new undertakings on historic properties.

Santa Clara Pueblo appreciates the opportunity to provide these comments on the Proposed Rule. We strongly urge the FCC to address issues regarding excessive time and expense for tribal reviews with less of a broad brush. The TCNS has been critical to protecting our sacred sites. We urge the FCC to deal with anyone not operating in good faith—from either the industry or tribal side—on an individualized basis. The FCC has a solemn duty to fulfill the United States' trust responsibility, which runs across all offices of the federal government. One of the most important elements in upholding the trust responsibility to tribes is protecting the sacred. We have lived on these lands since time immemorial, and the protection of our sacred spaces is critical to our cultural survival. Although we support the deployment of wireless infrastructure for all Americans, we hope the FCC will take seriously our sacred and cultural interests that must be considered in any cost-benefit analysis of how to improve the wireless infrastructure deployment process. Thank you.

Sincerely,



J. Michael Chavarria
Governor

cc via e-mail only:

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